

PROPOSED CHANGES TO MANITOBA'S WORKPLACE LAWS

Last month, the Manitoba Government proposed some significant legislative changes. Below is a summary of these changes and what this could mean for your workplace.

Changes to Unionized Workplaces

Construction Industry

Employers would not have to adjust their workforce to win work. Bids for publicly funded construction projects would no longer be limited or assessed by whether the workplace is unionized or not, or whether it is governed by a certain collective bargaining agreement. This will level the playing field between unionized and non-unionized companies.

Public Sector Union Obligations

Public sector unions' financial information will be more transparent to their members. Public sector unions will have to provide their members with audited financial statements and compensation information regarding any employees earning \$75,000 or more per year.

Employer Rights / Obligations

Employers would be prohibited from paying or compensating an employee on leave to be a full-time public sector union executive.

A new employer may not automatically acquire all rights and obligations that a former employer had if the character of the business has substantially changed after the acquisition.

Union Certification / Decertification

The following changes to the voting process are proposed:

- Only 40% employee support would be needed before setting a vote to displace or decertify a union (currently 45% support needed to vote to displace, and 50% support needed to vote on decertify);
- Before the vote to certify a union is held, the Manitoba Labour Board (the "Board") would be able to determine whether the 40% of employees in support of certification are representative of the employer's workforce and, if they are not, the Board will be able to delay the vote or dismiss the certification application; and
- Confirmation will be provided that votes can be conducted in person, electronically, or by telephone;

- The Board will not be able to provide names of employees who have signed certification, decertification, or termination petitions, which protects employees' right to vote anonymously.

Collective Bargaining

The Manitoba Labour Board (the “**Board**”) would be granted new powers to ensure greater accountability of all parties involved in collective bargaining, mostly to employers' benefit.

The Board will:

- only be able to settle the first collective agreement between the union and employer if the Board first determines that the party who made the application has bargained in good faith beforehand;
- be able to determine, on application by the union or the employer (except during the last three months of the term of the collective agreement), whether a bargaining unit continues to be appropriate for collective bargaining;
- no longer be able to settle subsequent collective agreements; and
- be able to direct a party that brings an issue before it without good reason to pay the costs of the other party in responding to the issue.

Labour Disputes

Employers will be able to end an employee's employment for strike-related misconduct without having to show proof of a criminal conviction for that misconduct.

Resolving labour disputes may take longer, as the Court of Appeal will be required to provide decisions as soon as practicable after a question of law is referred to it for consideration (rather than within six months).

Changes to Workplace Safety and Health

Proposed changes to *The Workplace Safety and Health Act* include the following:

- A 2x increase (doubling) of the maximum fines for offences under the Workplace Safety and Health Act;
- The elimination of the position of the chief prevention officer;
- Discriminatory action would be reframed as a reprisal (i.e. retaliation) and an employee would have six months from the date of the alleged reprisal to make a complaint to a safety and health Officer; and
- The Director would have the power to dismiss appeals of Officer's decisions if the appeal is frivolous or vexatious, or in the case of a reprisal, if the complaint was not brought to an officer within six months.

Workers Compensation

Coverage & Assessment

Both coverage and compensation for workers would be broadened. The meaning of “accidents” and “occupational diseases” would be expanded to cover a wider range of workplace incidents from the date the relevant impairment or loss of earnings began, which would be determined by the Workers Compensation Board of Manitoba (“**WCB**”). The definition “accident” will include occupational diseases, post-traumatic stress disorder and acute reactions to traumatic events. An occupational disease presumption may be established by regulation.

Assessment flexibility under the Accident Fund would be decreased. Provincially-funded industries (Class A under the Accident Fund) will be removed. Further, the WCB will be able to assign self-insured employers to different Accident Fund assessment classes, but would no longer be able to create new classes for employers.

Compensation

Maximum annual earnings would also increase to \$150,000 for accidents in 2022 or later. Additionally, the WCB would have more flexibility to administer compensation payments and medical aid to workers.

Administration & Enforcement

Some of the key administration and enforcement changes introduced include the following:

- The addition of a prevention advisory council and the ability to establish WCB committees;
- The buyer of a business will be made liable for the seller's outstanding debts to the WCB if a clearance certificate is not first obtained;
- Employers will not be able to deduct employee benefits to pay for an employee's compensation claim. The WCB could reimburse affected employees and collect the amount from employers; and
- Further, employers would need to pay penalties for late annual assessment payments, and pay fines from administrative penalties and offences into the Accident Fund.

Where can I find more information?

For more information, please contact our team at merit@meritnational.com.